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IN THE

Supreme Court of the United States

TENNESSEE STUDENT ASSISTANCE CORPORATION,

Petitioner,

v.

PAMELA L. HOOD,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF AMICUS CURIAE G. ERIC BRUNSTAD, JR. IN SUPPORT OF THE RESPONDENT

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QUESTION PRESENTED

Whether a governmental unit that holds a claim as an assignee of a non-governmental entity lacks the ability to assert sovereign immunity as a defense in a bankruptcy proceeding to determine the dischargeability of the assigned claim, and, if not, whether a governmental unit's assertion of sovereign immunity may thwart the jurisdiction of the bankruptcy court to determine the debtor's discharge under Congress's exercise of its power under the Bankruptcy Clause, U.S. Const. art. I, § 8, cl. 4?

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INTEREST OF THE AMICUS CURIAE

Amicus curiae G. Eric Brunstad, Jr., respectfully submits this brief in support of the Respondent. Pursuant to Rule 37.3(a), all parties have consented to the filing of this brief.[1]

The undersigned *amicus* is the Macklin Fleming Visiting Lecturer of Law at the Yale Law School where he teaches courses on bankruptcy law, domestic and international business reorganizations, and secured transactions. He has taught at Yale since 1992, and has also taught at the Harvard Law School.

In addition to teaching, the undersigned is the current Vice-Chair of the ABA Business Bankruptcy Committee. He is also a partner with the law firm of Bingham McCutchen LLP, practicing in the areas of bankruptcy law and appeals. He is a contributing author to the Collier treatise on bankruptcy and is responsible for writing and editing multiple chapters of the treatise. He has argued matters of bankruptcy law before the Court, most recently in the case *Till v. SCS Credit Corp.*, no. 02-1016, and has participated in several other bankruptcy cases before the Court, most recently as co-counsel for one of the parties in *Lamie v. United States Trustee*, no. 02-693; *Kontrick v. Ryan*, no. 02-0819; and *FCC v. NextWave Personal Communications Inc.*, nos. 01-653, 01-657, and as *amicus* in *Archer v. Warner*, no. 01-1418.

The undersigned is interested in the administration of bankruptcy law, particularly matters relating to the administration of the discharge in bankruptcy. He has studied and published articles on a variety of bankruptcy topics, including the history of bankruptcy law and the evolution of

1. Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party to this dispute authored this brief in whole or in part and no person or entity, other than *amicus curiae*, made a monetary contribution to the preparation or submission of this brief. Copies of the relevant letters of the parties consenting to the filing of this brief are lodged herewith.

the discharge. The perspective of the undersigned is that, in order to preserve the discharge provisions of bankruptcy law, it is critical to ensure the integrity of the bankruptcy system by preventing individual creditors, including governmental units, from excepting themselves from its comprehensive operation. Consistent with Supreme Court Rule 37.1, the purpose of this brief is to bring to the Court's attention matters that other parties do not intend to address, particularly relating to the status of the Petitioner as the assignee of a claim from a non-governmental entity, certain aspects of the *in rem* nature of bankruptcy proceedings, and the evolution of the bankruptcy courts' administration of discharge relief.

STATEMENT

Between 1988 and 1990, respondent Pamela Hood ("Hood") borrowed money from private sources to fund her educational expenses. In due course, Sallie Mae, a federally chartered, non-governmental organization, acquired her loans, and thereafter Hood made installment payments on her loans to Sallie Mae.[2] Petitioner, Tennessee Student Assistance

2. As a government-sponsored entity, Sallie Mae (also known as the Student Loan Marketing Association or "SLMA") is a private corporation financed by private capital and operated under a Federal charter. 20 U.S.C. § 1087-2; 2 U.S.C § 622(8); *Student Loan Mktg. Ass'n v. Riley*, 104 F.3d 397, 400 (D.D.C. 1997). Established by Congress in 1972, Sallie Mae serves as a secondary market and warehousing facility for student loans, and provides for perfection of security interests in student loans as well as reinsurance of student loans through agreements with the Secretary of Education. 20 U.S.C. § 1087-2(a). Sallie Mae does not originate student loans. Rather, Sallie Mae acquires loans from three sources: preferred lenders, purchase commitments, and the spot market. *Riley*, 104 F.3d at 400; SLM Corp., 2002 ANNUAL REPORT 4 (2003). In 1996, Sallie Mae obtained Congressional approval to convert from a government-sponsored entity to a private-sector corporation. Once Sallie Mae sheds its government-sponsored entity status it will be able to originate student loans directly. SLM Corp., 2002 ANNUAL REPORT 8 (2003).

Corporation ("TSAC"), guaranteed her loans to Sallie Mae.[3] Approximately nine years after receiving her student loans, Hood encountered financial difficulty and, on February 26, 1999, commenced a chapter 7 bankruptcy case in the United States Bankruptcy Court for the Western District of Tennessee (the "Bankruptcy Court").

By operation of law, when a debtor files a chapter 7 case, a bankruptcy estate is created consisting of all of the debtor's property. 11 U.S.C. §§ 103(a) & 541(a). A debtor's bankruptcy filing also triggers the "automatic stay," which enjoins debt-collection activity against the debtor, or property of the estate, during the pendency of the case. 11 U.S.C. § 362(a). Hood's filing of her bankruptcy case thus prevented Sallie Mae from taking action to collect the unpaid balance of her student loans during the pendency of her case.

Under the Bankruptcy Code, a debtor's monetary obligations constitute "claims" against the debtor's bankruptcy estate. 11 U.S.C. §§ 101(5) & 502(b). Creditors holding pre-petition claims, including unsecured creditors such as Sallie Mae, are entitled to file a "proof of claim" with the bankruptcy court. 11 U.S.C. §§ 101(10) & 501(a); FED. R. BANKR. P. 3001 & 3002.[4] Creditors filing proofs of claim may be entitled to distributions (to the extent available) from the proceeds collected from the liquidation of the debtor's bankruptcy estate. 11 U.S.C. § 726. In general, however, only creditors, including governmental units, that file proofs of claim are entitled to

3. TSAC is a governmental corporation created by the State of Tennessee for the purpose of facilitating student loans in Tennessee. TENN. CODE ANN. § 49-4-201 (2003).

4. The Bankruptcy Code defines "creditor" as a person holding a claim that arises before the debtor commences a bankruptcy case. 11 U.S.C. § 101(10). The term "pre-petition" refers to claims or events arising or occurring *before* the debtor files a bankruptcy petition. Conversely, the term "post-petition" refers to claims or events arising or occurring *after* the debtor files the petition.

distributions. *Id.*; *see also* FED. R. BANKR. P. 3002(a); *New York v. Irving Trust Co.*, 288 U.S. 329, 333 (1933).

In this case, on November 29, 1999, Sallie Mae filed a proof of claim stating that Hood owed a debt for the unpaid balance of her loans. Because TSAC had guaranteed Hood's indebtedness, TSAC was obligated to pay the outstanding balance of Hood's loans to Sallie Mae, which it did. Sallie Mae then assigned its claim against Hood to TSAC. As a result, TSAC holds its claim against Hood as the assignee of Sallie Mae.[5]

After a debtor commences a chapter 7 case, the debtor receives a discharge unless a party in interest, including a creditor, objects. 11 U.S.C. § 727(c) & (d). In a chapter 7 case, the grounds for objecting to the debtor's discharge are set forth in section 727(a). *See also* FED. R. BANKR. P. 4004. Absent objection, the effect of section 727 is to release the debtor from personal liability for most pre-petition monetary obligations. 11 U.S.C. § 727(b); *see also* 11 U.S.C. § 524; *Johnson v. Home State Bank*, 501 U.S. 78, 84 n.5 (1991). In addition, the discharge applies to pre-petition claims regardless of whether the creditor has filed a proof of claim. *In re Duplan*, 212 F.3d 144, 154 (2d Cir. 2000).

The scope of the discharge is specifically subject to exceptions for certain kinds of debts. 11 U.S.C. § 523. Student loans insured or guaranteed by a governmental unit are among the exceptions, "unless excepting such debt from discharge . . . will impose an undue hardship on the debtor and the debtor's dependents." 11 U.S.C. § 523(a)(8). In other words, a student loan *is* dischargeable if the debtor can demonstrate that the burden of repaying it would pose an "undue hardship." *Id.* A proceeding to declare the dischargeability of a particular

5. The transfer of a claim in bankruptcy is governed by Federal Rule of Bankruptcy Procedure 3001(e). In accordance with this rule, a form indicating the assignment of Sallie Mae's proof of claim to TSAC was filed with the Bankruptcy Court on December 20, 1999.

debt under section 523, including a debt for a student loan that poses an undue hardship, is pursued as an "adversary proceeding" commenced by either the debtor or the creditor with the filing of a complaint. FED. R. BANKR. P. 7001(6); *see also* FED. R. BANKR. P. 4007.

On June 4, 1999, Hood received her general discharge in her chapter 7 case. On October 14, 1999, she commenced an adversary proceeding to determine that her student loans were properly dischargeable under the undue hardship provision. In her complaint, Hood named Sallie Mae as a defendant, affording Sallie Mae the opportunity to demonstrate that Hood's repayment of her student loan would not cause "undue hardship." On February 22, 2000, Hood amended her complaint to add TSAC as the holder of Sallie Mae's claim.

Thereafter, the Bankruptcy Court denied TSAC's motion to dismiss for lack of jurisdiction under the Eleventh Amendment. On appeal, the United States Bankruptcy Appellate Panel for the Sixth Circuit affirmed, as did the Sixth Circuit Court of Appeals.

SUMMARY OF ARGUMENT

TSAC's challenge to the Bankruptcy Court's jurisdiction over Sallie Mae's claim must fail because TSAC, as the assignee of Sallie Mae's claim, has no sovereign immunity with respect to the claim and because Sallie Mae, as a federally chartered institution, lacks any defense of sovereign immunity, including immunity under the Eleventh Amendment.

The rights of creditors are fixed as of the date the bankruptcy petition is filed and a claim that is assigned retains the character and status it had when held by the original assignor. In other words, when a non-governmental creditor assigns a claim to a governmental agency, the claim is still treated as the claim of the non-governmental creditor for bankruptcy purposes. Thus, if a governmental entity files a proof of claim, its claim becomes

bound to all of the adjustment and discharge rules of bankruptcy law. There is no reason why a different rule should apply simply because a governmental unit acquires a claim through assignment from a non-governmental entity.

This principle is essential to the administration of the bankruptcy process. If the status of a claim were subject to change based on the changing identity of the holder of the claim, it would be impossible for the bankruptcy court to fulfill its function of finally determining the rights of all interested parties, making payments on claims, and granting the debtor a comprehensive discharge. Moreover, if a governmental unit could alter the status of claims simply by taking assignment, the government would be able to "game the system" in derogation of fundamental bankruptcy principles.

There is no injustice to TSAC in this case arising from the application of these principles, nor does the Bankruptcy Court's application of Congress' discharge procedure in this case offend the Eleventh Amendment. Under the Bankruptcy Code, Hood is entitled to a discharge of her monetary obligations, including those held by governmental units. Unlike most debts, student loans are not discharged unless the debtor can show the existence of an "undue hardship" under section 523(a)(8). Although a governmental unit may participate in this determination, it is not required to do so. Because the proceeding is elective and involves no possibility of an adverse monetary award against it, TSAC cannot convert its mere privilege of participation into an Eleventh Amendment immunity.

Moreover, Sallie Mae, a federally chartered corporation funded with private capital and owned by private shareholders, itself lacked any defense of sovereign immunity with respect to its claim. To the extent that Sallie Mae could be said to possess any such immunity, it would be federal in nature and Congress has abrogated the immunity of federal governmental units under

section 106(a)(1) with respect to the allowance of claims, application of the discharge, and exceptions to discharge. Sallie Mae also waived any sovereign immunity when it filed its proof of claim.

Wholly apart from the foregoing analysis, sovereign immunity simply is not available to thwart the bankruptcy courts' administration of *in rem* bankruptcy proceedings or their administration of the debtor's discharge. Similar to admiralty proceedings, these aspects of bankruptcy law are critical to the function of bankruptcy courts and have been part of the essential design of bankruptcy law for over four centuries.

Bankruptcy proceedings are fundamentally *in rem* in nature, and the debtor's property resides fully in the custody of the bankruptcy court, as is apparent in the critical bankruptcy functions of protecting and preserving the debtor's assets and the adjustment and payment of claims against those assets, the same basic functions that a court of admiralty performs in resolving competing claims against a vessel subject to the court's *in rem* admiralty jurisdiction. Just as it may not assert sovereign immunity to thwart the exercise of admiralty jurisdiction, a governmental unit may not assert sovereign immunity to circumvent the exercise of bankruptcy jurisdiction. It is only because the bankruptcy process is binding on all creditors that the critical functions of bankruptcy law may be performed.

These same considerations lead inexorably to the conclusion that the Bankruptcy Court may adjudicate Hood's discharge. The power to finally adjudicate a claim necessarily subsumes the power to discharge it. Moreover, the role of administering discharges in bankruptcy is no less critical, no less traditional, no less in need of administration by a centralized authority, and no less outside the purview of state courts, than the adjustment and payment of claims from the debtor's estate. This Court's precedents establish that the bankruptcy system is designed, not

only to distribute the property of the debtor fairly and equally among creditors, but also to aid the unfortunate debtor by giving her a fresh start in life, free from debts, after the bankruptcy estate has been administered for the benefit of creditors. This Court has also made plain that a State may not ignore or burden a debtor's discharge by attempting to collect a debt after a debtor has obtained federal bankruptcy relief. These decisions necessarily require that the State be bound by the debtor's discharge and that the bankruptcy courts must have the power to grant a discharge effective against the State, notwithstanding its sovereignty. If it were otherwise, the State would be free to collect the debt because it is only the discharge that prevents it from doing so.

The discharge is for Congress alone to prescribe, condition, or limit, and the Eleventh Amendment does not bar a federal bankruptcy court from granting discharge relief from claims of governmental creditors. The adjustment of the debtor-creditor relationship lies at the heart of the federal bankruptcy power and States are largely prohibited from granting discharge relief. By constitutional design, it is Congress alone that may prescribe a comprehensive discharge remedy.

The purpose of Congress's discharge authority under the Bankruptcy Clause is to permit the enactment of a discharge procedure that allows insolvent debtors to obtain the release of burdensome debts under a uniform national standard. Governmental units are bound by a bankruptcy court's grant of discharge relief, just as they are bound by a decree finally settling all interests in an *in rem* proceeding.

Moreover, just as only one court may adjudicate the relative entitlements of competing claimants to the same assets in the custody of the court, only one court may resolve whether a debtor is entitled to a discharge. TSAC's argument that Hood's ability to discharge her student loan debt should be tested in the state courts was rejected as an "abuse" of the debtor's discharge by

this Court's unanimous opinion in *Brown v. Felsen*, 442 U.S. 127 (1979).

Like the resolution of claims against the debtor's assets, resolution of claims against the debtor's person in the bankruptcy discharge context is a core bankruptcy function in need of centralized administration. Just as a governmental unit may not assert the Eleventh Amendment to thwart the bankruptcy court's *in rem* jurisdiction to resolve all claims against the debtor's estate, it may not assert the Eleventh Amendment to thwart the bankruptcy court's comprehensive jurisdiction to grant and resolve the debtor's discharge.

The bankruptcy courts properly possess the power, through exercise of their discharge authority, to terminate completely a governmental creditor's pursuit of a claim against the debtor in state court. In this respect, the bankruptcy discharge is similar to *habeas corpus* relief. Just as a State may not interfere with the writ, it may not interfere with the debtor's discharge.

ARGUMENT

A. TSAC, As the Assignee of Sallie Mae's Claim, Has No Sovereign Immunity to Assert With Respect to the Claim.

Questions of subject matter jurisdiction may be addressed at any point in a proceeding, including the question of whether a case or controversy is properly presented to the Court. FED. R. CIV. P. 12(h)(3); *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (stating that "a party does not waive the [subject matter jurisdiction] requirement by failing to challenge jurisdiction early in the proceedings").

TSAC, as the assignee of Sallie Mae's claim, challenges the Bankruptcy Court's subject matter jurisdiction over the claim, including Hood's right to have the claim discharged as

an "undue hardship," on the theory that jurisdiction is barred by the Eleventh Amendment. TSAC argues that, because of its immunity, the issue of whether Hood should receive a discharge of the claim should be addressed in state court. Pet. Brief at 30. TSAC, however, cannot contend that it is immune from the Bankruptcy Court's application of federal bankruptcy law to the claim that it acquired from Sallie Mae.

By operation of law, after Hood commenced her bankruptcy case, Sallie Mae held a "claim" against Hood's bankruptcy estate for the balance due on Hood's student loans, and Sallie Mae's claim became fully subject to the Bankruptcy Court's application of the adjustment and discharge provisions of the Bankruptcy Code. In addition, several months after Hood commenced her bankruptcy case, Sallie Mae filed a proof of claim against Hood's estate, thus voluntarily presenting its claim to the Bankruptcy Court. As Sallie Mae's assignee, TSAC likewise holds Sallie Mae's bankruptcy claim subject to the Bankruptcy Court's application of the adjustment and discharge provisions of the Code.

1. **After a debtor commences a bankruptcy case, and particularly after a creditor files a proof of claim, the claim remains subject to the bankruptcy court's application of the adjustment and discharge provisions of the Bankruptcy Code regardless of its assignment.**

As noted, when a debtor commences a bankruptcy case, the debtor's obligations become "claims" against the debtor's bankruptcy "estate." 11 U.S.C. §§ 101(5), 501 & 541. Similarly, after a debtor commences a bankruptcy case, and especially after a creditor files a proof of claim, federal bankruptcy law regulates the transfer of the claim, as well as the effect of any transfer.

Under applicable federal law, the rights of creditors are fixed "as of the date of the filing of the petition in bankruptcy." *United States v. Marxen*, 307 U.S. 200, 207 (1939);

see also White v. Stump, 266 U.S. 310, 313 (1924); *Sexton v. Dreyfus*, 219 U.S. 339, 345 (1911). Thereafter, if a claim is assigned from one holder to another, the claim retains the character and status that it had in the hands of the original assignor. For example, when a non-governmental creditor assigns a claim to a governmental agency, the claim is still treated as the claim of the non-governmental creditor for purposes of bankruptcy, and the governmental agency cannot cloak the claim with any special right or priority, as if the claim had originated in its hands. 11 U.S.C. §§ 101(10) & 501(a); FED. R. BANKR. P. 3001 & 3002; *Marxen*, 307 U.S. at 207.

As this Court has similarly explained in the general context of assigned debts in bankruptcy, "[t]he character of the debts was fixed when they were incurred, and could not be changed by an assignment." *Shropshire, Woodliffe, & Co. v. Bush*, 204 U.S. 186, 189 (1907). Thus, for example, when an employee assigns a wage claim to a third party who has paid for the claim, the assignee is deemed to hold the same claim for bankruptcy purposes, and not some other type of obligation. *Id.*

Following this Court's decision in *Marxen*, numerous lower courts have adhered to the rule that a claim assigned to a governmental agency retains its original character. As these decisions further explain, it makes no difference that the assignee insured or guaranteed the relevant debt and took assignment as a result. For example, the Second Circuit has concluded that

> it is now settled [by *Marxen*] that the obligation owed by the debtor on his note is a simple debt to the bank while held by the [bank] and that its status cannot be changed by assignment [to the United States which guaranteed the debt] after the debtor has been adjudicated bankrupt.

In re Miller, 105 F.2d 926, 928 (2d Cir. 1939); *see also United States v. Brocato*, 403 F.2d 105, 108-09 (5th Cir. 1968); *Hatter v. United States (In re Bowling Green Milling Co.)*, 132 F.2d

279, 285 (6th Cir. 1942); *In re Hansen Bakeries, Inc.*, 103 F.2d 665, 666-67 (3d Cir. 1939).

In this case, when Sallie Mae transferred its claim to TSAC, it did so in accordance with the relevant claim transfer provisions of Rule 3001(e)(2) (which require the filing of a notice of transfer with the Bankruptcy Court).[6] Under applicable bankruptcy law the fundamental character of the claim did not change simply because Sallie Mae assigned it to TSAC. Rather, it remained a bankruptcy claim, proof of which was asserted in the Bankruptcy Court. Nor did the assignment to TSAC divest the Bankruptcy Court of jurisdiction over the claim.

If a governmental unit wishes to collect a claim against a bankrupt debtor (whether it obtains the claim by assignment or otherwise), it is obliged to follow applicable bankruptcy procedures and cannot avoid these procedures on the ground that it is a governmental entity. *Irving Trust Co.*, 288 U.S. at 333 ("If a state desires to participate in the assets of a bankrupt, she must submit to the appropriate requirements of the controlling power."). In addition, if a government entity files a proof of claim, its claim becomes bound to all of the adjustment and discharge rules of applicable bankruptcy law in the bankruptcy court. *See Gardner v. New Jersey*, 329 U.S. 565, 574 (1947) (when a State files a proof of claim, "it waives any immunity it otherwise might have had respecting the adjudication of the claim."). There is no reason why a different rule should apply in cases such as this one in which, rather than file its own proof of claim, a governmental unit acquires a claim through assignment from a non-governmental entity that has filed a proof of claim.

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6. Rule 3001(e)(2) provides in relevant part: "If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee." FED. R. BANKR. P. 3001(e)(2).

As the Court's precedents make plain, a governmental unit holding a claim (whether by assignment or otherwise) has a choice: it may seek to collect the claim, in which case it must abide by the rules of the bankruptcy process (including the superintendence of the Bankruptcy Court), or it may avoid these rules and forego its claim. In this instance, TSAC impermissibly wishes both to avoid the rules of the bankruptcy process *and* recover its claim, even though Sallie Mae submitted the claim to the Bankruptcy Court. TSAC, however, voluntarily took assignment of a bankruptcy claim, proof of which was filed in the Bankruptcy Court. As a result, TSAC cannot expect to hold anything other than what it acquired: a bankruptcy claim subject fully to the Bankruptcy Court's application of the adjustment and discharge provisions of the Bankruptcy Code.

This conclusion is essential to the administration of the bankruptcy process. Chapter 7 bankruptcy cases are collective proceedings in which the debtor surrenders all nonexempt assets to a trustee to be marshaled and liquidated, with the proceeds then distributed to creditors. In exchange, the debtor receives a discharge as Congress has prescribed. In order to finally determine the rights of all interested parties, make payments on claims, and grant the debtor a comprehensive discharge, the bankruptcy court properly exercises comprehensive jurisdiction. 28 U.S.C. §§ 1334 & 157.

For obvious practical reasons, the character and status of a claim, and the forum for its resolution under applicable bankruptcy law, must be fixed at some point in order for the process to run efficiently. If the status of a claim were constantly subject to change based on the changing identity of the holder of the claim (rather than on the characteristics of the claim at the time the debtor filed for bankruptcy), this would present an impossible situation for the bankruptcy court. If a governmental unit is entitled to payment under Congress's distribution scheme, this must be considered long *before* the proceeds of the debtor's estate are disbursed to others. Accordingly, federal law properly

prescribes the rule that, after a debtor files for bankruptcy relief, an assigned claim will be treated for bankruptcy purposes as though the assignment had never occurred.

Permitting governmental units to alter the status of a claim through assignment is also problematic because doing so affords the opportunity to "game the system." If a governmental unit could alter the status of a claim simply by taking assignment, the governmental unit might buy up cheaply any number of claims (*e.g.*, from holders who did not enjoy the same priorities or other special privileges) and then cloak the acquired claims with the governmental unit's priorities and privileges in order to assert them to its own advantage. As this Court has observed, however, "[t]he theme of the Bankruptcy Act is 'equality of distribution,' and if one claimant is to be preferred over others, the purpose should be clear from the statute." *Nathanson v. NLRB*, 344 U.S. 26, 29 (1952) (quoting *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215, 219 (1941)). Congress has not provided that a claim is entitled to special treatment simply because it has been transferred to a governmental unit. On the contrary, the longstanding rule of bankruptcy law is that the assignment of a claim carries with it no such benefit.

In addition to protecting bankruptcy courts' ability to administer cases and avoiding gamesmanship, the rule that assignment does not alter the status of a claim is also essential to the debtor's discharge. TSAC suggests that, following Hood's bankruptcy proceeding, it should be permitted to sue Hood on the debt in state court. Pet. Brief at 30. TSAC offers that, in such a suit, Hood might raise as a defense that her student loan debt has been discharged because it presents an "undue hardship." *Id.* The point of the discharge, however, is precisely to free debtors from the burden of such ancillary litigation. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) (noting purpose of discharge is to grant debtors "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt"); *Grogan v. Garner*, 498

U.S. 279, 286 (1991); *Brown v. Felsen*, 442 U.S. 127, 135-36 (1979); *Perez v. Campbell*, 402 U.S. 637, 648 (1971); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 582 (1935). Indeed, the prospect of a discharged debtor having to defend a costly collection suit brought by a well-heeled creditor is precisely what Congress has proscribed. 11 U.S.C. § 524(a). Treating a claim as unaltered by assignment prevents a governmental unit that acquires a claim from burdening the debtor's discharge by drawing the debtor into costly litigation outside the bankruptcy forum.

There is no injustice to TSAC in this case arising from the application of these salient principles of bankruptcy law. Nor does the Bankruptcy Court's application of Congress's discharge procedure in this case offend the Eleventh Amendment.

Under the Bankruptcy Code, Hood is generally entitled to a discharge of her monetary obligations, including those held by governmental units, without the need to engage in costly litigation with her creditors in federal court. 11 U.S.C. §§ 524 & 727. To be sure, any creditor that wishes to oppose her discharge may (and indeed must) take action in the Bankruptcy Court, but this is no different from a creditor's obligation to file a proof of claim if the creditor desires to participate in any distribution from the bankruptcy estate. The creditor's right to object to a discharge is a privilege that Congress has bestowed in the administration of discharge relief, and nothing more.

Unlike most debts, student loans are not discharged in bankruptcy unless the debtor can show the existence of an "undue hardship." 11 U.S.C. § 523(a)(8). If it so chooses, a governmental unit may participate in the "undue hardship" determination, and the debtor is effectively obligated to afford the governmental creditor the opportunity to do so. But there is no compulsion to participate, and TSAC is free to decline to join in the proceeding. Because the proceeding is purely elective and involves no possibility of an adverse monetary award, TSAC

cannot convert its mere privilege of participation into an Eleventh Amendment immunity. Accordingly, its challenge must fail.

2. Sallie Mae, as a federally chartered corporation, lacks the defense of sovereign immunity, and, alternatively, waived any defense of sovereign immunity that it might possibly have had.

Nor may TSAC assert successfully that the claim is cloaked with sovereign immunity because Sallie Mae enjoyed such a privilege. Sallie Mae is a federally chartered corporation funded with private capital and owned by private shareholders. Accordingly, Sallie Mae lacked any defense of sovereign immunity with respect to its claim.

Moreover, to the extent that Sallie Mae could be said to possess any such immunity, its immunity would be federal in nature (because Sallie Mae is not the arm of any State, as required for protection under the Eleventh Amendment) and Congress has abrogated the immunity of federal governmental units under section 106 of the Bankruptcy Code with respect to the allowance of claims (11 U.S.C. § 502), application of the discharge (11 U.S.C. § 524), and exceptions to discharge (11 U.S.C. § 523). 11 U.S.C. § 106(a)(1).[7] Alternatively, for the reasons set forth in *Gardner*, Sallie Mae waived any defense of sovereign immunity when it filed its proof of claim. *Gardner*, 329 U.S. at 574; *Clark v. Barnard*, 108 U.S. 436, 447-48 (1883).

Because Sallie Mae lacks any defense of sovereign immunity, TSAC (as the assignee of Sallie Mae's claim) likewise lacks any such defense and can claim no special privilege in

7. Moreover, Congress has provided that the Bankruptcy Court may "hear and determine any issue arising with respect to the application of [sections 523 and 524] to governmental units." 11 U.S.C. § 106(a)(2). It has also provided that the Bankruptcy Court "may issue against a government unit an order, process, or judgment under [sections 523 and 524]." 11 U.S.C. § 106(a)(3).

Hood's bankruptcy case in connection with the claim. Accordingly, TSAC's challenge to the Bankruptcy Court's jurisdiction over the claim, including discharge of the claim, must fail.

B. Sovereign Immunity is Not Available to Bar the Bankruptcy Court's *In Rem* Jurisdiction Over the Administration of Hood's Bankruptcy Estate or Bankruptcy Discharge.

Even if TSAC were not precluded from asserting Eleventh Amendment immunity with respect to an assigned bankruptcy claim that Sallie Mae submitted to the Bankruptcy Court, sovereign immunity is not available to thwart the Bankruptcy Court's administration of an *in rem* bankruptcy proceeding or the Bankruptcy Court's administration of Hood's discharge.

The centralized administration of these two critical features of bankruptcy law in a single forum is not simply a matter of convenience or optional legislative design. Rather, similar to admiralty proceedings, these aspects of bankruptcy law are both central and critical to its function and have been part of the essential design of bankruptcy law for over four centuries. Accordingly, the Eleventh Amendment is no bar to the Bankruptcy Court's resolution of Hood's discharge in this case.

1. Bankruptcy proceedings involving the administration of the debtor's bankruptcy estate are fundamentally *in rem* in nature, and the Eleventh Amendment does not bar the Bankruptcy Court's complete exercise of jurisdiction over the estate.

This Court has observed that bankruptcy proceedings are fundamentally *in rem* in nature, and that, upon commencing a bankruptcy case, the debtor's property resides fully in the custody of the bankruptcy court. *Straton v. New*, 283 U.S. 318, 320-21 (1931); *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 189-90

(1902). The *in rem* nature of the proceedings is most readily apparent in the critical bankruptcy functions of protecting and preserving an insolvent debtor's assets and the adjustment and payment of claims against those assets. As the Court explained in *Straton*:

> The purpose of the Bankruptcy Act (11 USCA) passed pursuant to the power of Congress to establish a uniform system of bankruptcy throughout the United States, is to place the property of the bankrupt, whereever [sic] found, under the control of the court, for equal distribution among the creditors. The filing of the petition is an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate. This jurisdiction is exclusive within the field defined by the law, and is so far *in rem* that the estate is regarded as *in custodia legis* from the filing of the petition.

Straton, 283 U.S. at 320-21; *see also Pepper v. Litton*, 308 U.S. 295, 304 (1939). Significantly, these are the same basic functions that a court of admiralty performs in resolving competing claims against a vessel subject to the court's *in rem* admiralty jurisdiction.

As this Court explained in *California v. Deep Sea Research, Inc.*, 523 U.S. 491 (1998):

> Based on longstanding precedent respecting the federal courts' assumption of *in rem* admiralty jurisdiction over vessels that are not in the possession of a sovereign, we conclude that the Eleventh Amendment does not bar federal jurisdiction over the [vessel in question] and, therefore, that the District Court may adjudicate [the non-governmental party's] and the State's claims to the shipwreck.

Id. at 507-08. The same principle applies in bankruptcy.

As noted, a critical role of bankruptcy courts is to finally resolve all competing claims to the debtor's property to facilitate the final settlement of the proper disposition of that property and permit the payment of claims in accordance with Congress's scheme of priorities. Bankruptcy courts cannot perform these functions if individual creditors, including governmental units holding claims, are free to "opt out" of the process. Just as a governmental unit may not assert sovereign immunity to thwart the exercise of essential admiralty jurisdiction, a governmental unit may not assert sovereign immunity to circumvent the exercise of essential bankruptcy jurisdiction – because if it could, then there would be little left to that jurisdiction. It is only because the bankruptcy process is binding on all creditors that the critical functions of bankruptcy law may be performed.

These principles underlie the Court's unanimous analysis in *Irving Trust*. First, the Court observed that, if a State could avoid the bankruptcy procedures governing the presentation of claims, "estates could not be promptly closed." *Irving Trust*, 288 U.S. at 331. To solve this problem, Congress has the right to require all those interested in the debtor's estate, including governmental units, to appear and assert their claims:

> Congress has the right to establish a uniform system of bankruptcy throughout the United States; and, having given jurisdiction to a particular district court to administer and distribute the property, it may, in some proper way, in such a case as this, call upon all interested to appear and assert their rights.

Id. at 332 (citation omitted).

Second, in order to secure the efficient administration of bankruptcy estates, Congress has the right to bestow exclusive jurisdiction in a single tribunal over the administration of the estate and the determination and payment of claims. *Irving Trust*, 288 U.S. at 332. Third, it has long been recognized that, when one court takes possession of all of the assets of a debtor, that

court's jurisdiction over the assets, and all claims to them, is exclusive of all other courts. *Id.* at 332-33. Drawing these principles together, the Court concluded:

> The Federal government possesses supreme power in respect of bankruptcies. If a state desires to participate in the assets of a bankrupt, she must submit to appropriate requirements by the controlling power; otherwise, orderly and expeditious proceedings would be impossible and a fundamental purpose of the Bankruptcy Act would be frustrated.

Id. at 333 (citation omitted). This is little different from the Court's analysis in *Deep Sea*.

In *Deep Sea*, the Court first recognized that the "federal courts have had a unique role in admiralty cases." 523 U.S. at 501. Likewise, the federal courts have historically performed a unique role in bankruptcy. Indeed, the Bankruptcy Act of 1800, which vested federal courts with jurisdiction in bankruptcy cases, is one of the earliest designations of federal question jurisdiction, following not long after the installation of federal admiralty jurisdiction in the first Judiciary Act of 1789. Bankruptcy Act of 1800, ch. 19, 2 Stat. 19 (1800) (repealed 1803); Judiciary Act of 1789, 1 Stat. 76, ch. 20 (1789).

Second, the Court focused on the fact that the *res* at issue (the shipwreck) was "not in the possession of the State." *Deep Sea*, 523 U.S. at 504. The Court acknowledged that, "[a]lthough the Eleventh Amendment bars federal jurisdiction over general title disputes relating to state property interests, it does not necessarily follow that it applies to *in rem* admiralty actions, or that in such actions, federal courts may not exercise jurisdiction over property that the State does not actually possess." *Id.* at 506. The same consideration also properly applies to a federal court's exercise of jurisdiction over a debtor's bankruptcy estate, which also is not in the possession of a governmental unit.

Drawing these concepts together, including "longstanding precedent respecting the federal courts' assumption of *in rem* admiralty jurisdiction over vessels that are not in the possession of a sovereign," the Court held that the federal court could adjudicate all claims to the *res* in its possession, including the claims of the State. *Id.* at 507-08. As explained in *Irving Trust*, the same analysis applies in bankruptcy. Accordingly, notwithstanding TSAC's assertion of sovereign immunity, the Bankruptcy Court may properly adjudicate TSAC's claim to Hood's assets.

2. Bankruptcy proceedings involving the discharge of the debtor's obligations are binding on governmental units.

The same considerations lead inexorably to the conclusion that the Bankruptcy Court may adjudicate Hood's discharge. In general, the power to finally adjudicate a claim necessarily subsumes the power to discharge it. More important, the role of administering discharges in bankruptcy is no less critical, no less traditional, no less in need of administration by a centralized authority, and no less outside the purview of state courts, than the adjustment and payment of claims from the debtor's estate.

As the Court explained nearly a century ago:

> The federal system of bankruptcy is designed not only to distribute the property of the debtor, not by law exempted, fairly and equally among his creditors, but as a main purpose of the act, intends to aid the unfortunate debtor by giving him a fresh start in life, free from debts, except of a certain character, after the property which he owned at the time of bankruptcy has been administered for the benefit of creditors. Our decisions lay great stress upon this feature of the law – as one not only of private but of great public interest in that it secures to the unfortunate debtor, who surrenders his property for distribution, a new opportunity in life.

Stellwagen v. Clum, 245 U.S. 605, 617 (1918). A half-century later, the Court made plain in *Perez v. Campbell*, 402 U.S. 637, 656 (1971), that a State may not ignore or burden a debtor's discharge by attempting to collect a debt after a debtor has obtained federal bankruptcy relief.

The holding in *Perez* necessarily subsumes the principle that the State is bound by the debtor's discharge. Otherwise, the State would be free to collect the debt because it is only the discharge that prevents it from doing so. *See* 11 U.S.C. § 524. If the State is properly bound by the debtor's discharge, then the bankruptcy court must have the power to grant a discharge effective against the State notwithstanding its sovereignty.

In this case, Congress has provided that a debtor such as Hood may obtain a discharge of her student loans if she can demonstrate an "undue hardship." 11 U.S.C. § 523(a)(8). At its election, TSAC may participate in the resolution of this issue, or it may ignore the proceeding altogether. But TSAC cannot impede the Bankruptcy Court from granting Hood a discharge from her student loans simply because TSAC is a governmental unit that would like to reserve for itself the right to collect the debt and test her discharge in state court. The discharge is for Congress alone to prescribe, condition, or limit, and the Eleventh Amendment does not bar a federal bankruptcy court from granting discharge relief from claims of governmental creditors.

As this Court has observed, the adjustment of the debtor-creditor relationship lies at the heart of the federal bankruptcy power. *Northern Pipeline Constr. Co. v. Marathon Pipeline Constr. Co.*, 458 U.S. 50, 71 (1982). In contrast, States are largely prohibited from granting discharge relief.

For example, under the Contracts Clause, States are generally barred from releasing pre-existing contractual obligations between creditors and debtors. U.S. CONST. art. I,

§ 10, cl. 1; *see also Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 368-69 (1827) (a State may discharge prospective obligations only); *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 131-34 (1819). States are further barred from releasing debts owed to citizens of other States. *Ogden*, 25 U.S. at 368 ("[D]ischarge under a State law [is] incompetent to discharge a debt due a citizen of another State."). Thus, by constitutional design, if a debtor is to receive a discharge, it is Congress alone that may prescribe a comprehensive discharge remedy. *See* G. Eric Brunstad, Jr., *Bankruptcy and the Problems of Economic Futility: A Theory on the Unique Role of Bankruptcy Law*, 55 BUS. LAW. 499, 577-79 (2000) (hereinafter *Brunstad, Bankruptcy*) (discussing the constitutional limits on the States' ability to grant bankruptcy relief).

Although a governmental unit might always voluntarily forgive its own claim, the purpose of Congress's discharge authority under the Bankruptcy Clause is to permit the enactment of a discharge procedure that allows insolvent debtors to obtain the release of burdensome debts under a *uniform* national standard that does not depend on the discretionary whims of a State governmental entity. Moreover, as this Court's decision in *Perez* establishes, the States are fully bound by the debtor's discharge, and may not seek to collect discharged obligations even though doing so might fulfill important state policies. *Perez*, 402 U.S. at 649-52. Although the analysis in *Perez* focuses on the Supremacy Clause, its underlying principle applies with equal force in this case: governmental units are bound by a bankruptcy court's grant of discharge relief, just as they are bound by a decree finally settling all interests in an *in rem* proceeding. Indeed, in the bankruptcy context, it is only because governmental units are bound by the discharge provisions of bankruptcy law that the federal law is actually supreme.

Moreover, just as only one court may properly adjudicate the relative entitlements of competing claimants to the same assets in the custody of the court, only one court may properly

resolve whether a debtor is entitled to a discharge. TSAC argues that Hood's ability to discharge her student loan debt should be tested in the state courts in Tennessee. Specifically, TSAC contends that it should be free to sue Hood on its claim in state court and that Hood may assert the dischargeability of the debt as a defense in that proceeding. Pet. Brief at 30. Critically, however, the procedure that TSAC promotes is precisely one that the Court described in its unanimous opinion in *Brown v. Felsen*, 442 U.S. 127 (1979), as an "abuse" of the debtor's discharge.

As the Court explained in *Brown*, like the current Bankruptcy Code, the former Bankruptcy Act of 1898 contained provisions governing both a debtor's general discharge in bankruptcy, and the dischargeability of certain specific kinds of debts. Like section 727 of the current Code, section 14 of the former Act specified the conditions under which a debtor may obtain a general discharge. 11 U.S.C. § 727; Bankruptcy Act of 1898, ch. 541, § 14, 30 Stat. 544 (1898) (repealed 1979).

In contrast, like section 523 of the Code, section 17 of the Act specified the kinds of particular debts that were not dischargeable in spite of the debtor's receipt of general discharge relief. 11 U.S.C. § 523; Bankruptcy Act of 1898, ch. 541, § 17, 30 Stat. 544 (1898) (repealed 1979).

Traditionally, the bankruptcy courts alone decided whether the debtor was entitled to a general discharge under section 14. But prior to 1970, Congress "left the dischargeability under § 17 of a particular debt to the court in which the creditor sued, after bankruptcy, to enforce his prior judgment." *Brown*, 442 U.S. at 129. Creditors typically brought these suits in state court, and in responding to the suit, the debtor was entitled to demonstrate why the debt was dischargeable under section 17.

In 1970, Congress altered section 17 by requiring the issue of dischargeability to be determined in the federal bankruptcy

court. Critically, this Court explained the basis for the change as follows:

> The 1970 amendments eliminated postbankruptcy state-court collection suits as a means of resolving certain § 17 dischargeability questions. In those suits, creditors had taken advantage of debtors who were unable to retain counsel because bankruptcy had stripped them of their assets. *Congress' primary purpose was to stop that abuse.*

Id. at 135-36 (emphasis supplied). As the Court further explained:

> A secondary purpose . . . was to take these § 17 claims away from state courts that seldom dealt with federal bankruptcy laws and to give those claims to the bankruptcy court so that it could develop expertise in handling them. By the express terms of the Constitution, bankruptcy law is federal law, and the Senate Report accompanying the amendment described the bankruptcy court's jurisdiction over these § 17 claims as "exclusive."

Id. at 136 (citations omitted).

As the foregoing discussion reveals, if a discharge is to retain its vitality, its determination cannot be left to the vagaries of the procedure that TSAC prefers. Like the resolution of claims against the debtor's assets, resolution of claims against the debtor's person in the bankruptcy discharge context is no less critically a core bankruptcy function in need of centralized administration. Just as a governmental unit may not assert the Eleventh Amendment to thwart the bankruptcy court's *in rem* jurisdiction to resolve all claims against the debtor's estate, it may not assert the Eleventh Amendment to thwart the bankruptcy court's comprehensive jurisdiction to grant and resolve the debtor's discharge.

3. The historical role and purpose of a discharge in bankruptcy demonstrates that it is for Congress to determine the scope of the debtor's discharge, including whether it applies to governmental units.

Justice Cardozo once observed that although "[t]he history [of bankruptcy has been] one of an expanding concept [i]t is . . . an expanding concept that has had to fight its way," and "[a]lmost every change has been hotly denounced . . . as a usurpation of power." *Ashton v. Cameron County Water Improvement Dist.*, 298 U.S. 513, 535 (1936) (Cardozo, J., dissenting). In this case, TSAC complains that the determination of Hood's discharge is an infringement on its sovereignty. In fact, the opposite is true, as TSAC has no legitimate sovereignty interest in eroding Hood's discharge and its challenge constitutes an assault on Congress's exclusive authority to enact uniform and comprehensive bankruptcy laws.

Bankruptcy laws are inherently preemptive of non-bankruptcy debt-collection procedures, and it has always been understood that it is the prerogative of the legislature responsible for enacting bankruptcy relief to prescribe its rules and limitations within the broad confines of the Bankruptcy Power. In our system, that legislature is Congress, and as this Court has explained: "States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or provide additional or auxiliary regulations." *International Shoe Co. v. Pinkus*, 278 U.S. 261, 265 (1929).

Our Nation's bankruptcy laws trace their origins to English procedures. For much of English history, a debtor who could not pay his or her debts was treated as a criminal offender. Prior to the nineteenth century, imprisonment for debt was common. In the words of one seventeenth-century English jurist:

> If a man be taken in execution, and lie in prison for debt, neither the plaintiff, at whose suit he is arrested, nor the sheriff who took him, is bound to find him meat, drink, or clothes; but he must live on his own, or on the charity of others; and if no man will relieve him, let him die in the name of God, says the law, and so say I.

Peter J. Coleman, DEBTORS AND CREDITORS IN AMERICA 5 (1974) (quoting Sir Robert H. Hyde, J.) (internal citation omitted).

Not surprisingly, the earliest English bankruptcy laws were little more than special debt-collection devices intended to repress insolvent obligors. By 1705, however, English law began to experiment with the concept of discharge in bankruptcy to relieve honest but unfortunate bankrupts from the burdens of impossible indebtedness. *See* 1705, 4 Anne, c. 17, § 7 (Eng.); *see also Brunstad, Bankruptcy* at 515-16 n.60 (discussing this statute).[8]

In the United States, imprisonment for debt was also common well into the nineteenth century. *Brunstad, Bankruptcy* at 519-21 n.91. During periods of financial turmoil, insolvent obligors would often crowd the Nation's jails. This situation was exacerbated by the economic crisis generated by the war with France in 1799 and the succession of failed land speculations, thereby prompting Congress to enact the first bankruptcy law in 1800. Bankruptcy Act of 1800, ch. 19, 2 Stat. 19 (1800) (repealed 1803). Among other features, the Act allowed a limited discharge. *Id.* at § 34, 2 Stat. 30 ("every such bankrupt shall be discharged from all debts by him or her due or owing, at the time he or she became bankrupt").

Significantly, the Act prescribed a form of *habeas* relief: debtors under the Act were entitled to an order directing their release from prison if incarcerated on account of a discharged

8. The origins of the bankruptcy discharge are ancient. The Bible states: "At the end of every seven years you shall grant a release. And this is the manner of the release: every creditor shall release what he has lent to his neighbor; he shall not exact it of his neighbor, his brother, because the Lord's release has been proclaimed." *Deut.* 15:1-2; *see also* Brunstad, *Bankruptcy*, at 523-25 (discussing the history of debt forgiveness in bankruptcy law).

obligation. *Id.* at § 38, 2 Stat. 32 ("[I]f any bankrupt, who shall have obtained [a certificate of discharge], shall be taken in execution or detained in prison, on account of any debts owing before he became a bankrupt . . . it shall be lawful for any of the judges of the court wherein judgment was so obtained, or for any court, judge, or justice, within the district in which such bankrupt shall be detained, having powers to award or allow the writ of *habeas corpus*, on such bankrupt producing his certificate so as aforesaid allowed, to order any sheriff or gaoler who shall have such bankrupt in custody, to discharge such bankrupt without fee or charge. . . . "). Consistent with Congress's broad authority to delimit the reach of the Act, it also expressly excluded from the scope of its operation obligations owing to a State. *Id.* at § 62, 2 Stat. 36. Congress repealed the Act in 1803.

Following the extended economic crisis occasioned by the depression of 1837, Congress subsequently enacted the Nation's second bankruptcy law in 1841. Bankruptcy Act of 1841, ch. 9, 5 Stat. 440 (1841) (repealed 1843). Like the Act of 1800, the law allowed a discharge. *Id.* at § 4, 5 Stat. 443-44. This act was later repealed in 1843.

Following the Panic of 1857 and the widespread dislocation caused by the Civil War, Congress enacted the Nation's third bankruptcy law in 1867. Bankruptcy Act of 1867, ch. 176, 14 Stat. 517 (1867) (repealed 1878). This Act further liberalized the debtor's discharge. *Id.* at § 34, 14 Stat. 533. Congress repealed the measure in 1878.

Congress next enacted a bankruptcy law in 1898. Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (1898) (repealed 1979). This law greatly expanded the debtor's discharge. *Id.* at § 14, 30 Stat. 550. The Act of 1898, repealed in 1979, was replaced by the current Bankruptcy Code.

Although the practice of imprisonment for debt had largely ended over a century before, in 1978, when Congress passed the current Bankruptcy Code, it added a provision in the United

States Code similar to the provision included in the Act of 1800 empowering the bankruptcy court to free a debtor from imprisonment if jailed for a civil debt. The provision stated in relevant part: "A bankruptcy court may issue a writ of *habeas corpus* . . . ordering the release of a debtor in a case under title 11 in custody under the judgment of a Federal or State court if . . . such debtor was arrested or imprisoned in any civil action [for a dischargeable debt]." 28 U.S.C. § 2256, added by the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598 § 250(a), 92 Stat. 2549 (1978).[9]

As this Court has held in upholding the constitutionality of the Habeas Corpus Act of 1867 (which made the *habeas* writ generally available to state prisoners):

> [A]s the judicial power of the nation extends to all cases arising under the constitution, the laws, and treaties of the United States . . . no doubt can exist as to the power of congress thus to enlarge the jurisdiction of the courts of the Union. . . . That the petitioner is held under the authority of a state cannot affect the question of the power or jurisdiction of the circuit court to inquire into the cause of his commitment, and to discharge him, if he be restrained of his liberty in violation of the constitution.

Ex Parte Royall, 117 U.S. 241, 249 (1886). Similarly, in the bankruptcy context, the bankruptcy courts properly possess the power, through exercise of their discharge authority, to terminate completely a governmental creditor's pursuit of a claim against the debtor in state court, even though a State governmental entity may have an interest in pursuing the debtor in that forum. In this respect, the bankruptcy discharge is similar to habeas

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9. Section 2256 did not become permanently effective. *See* Lawrence P. King, 1 COLLIER ON BANKRUPTCY, ¶ 3.09[3] (15th ed. rev. 1999).

relief. Just as a State may not interfere with the writ, it may not interfere with the debtor's discharge by insisting that its scope be tested in a debt collection proceeding in state court.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Sixth Circuit should be affirmed.

Respectfully submitted,

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RELEVANT STATUTORY PROVISIONS

2 U.S.C. § 622 provides in relevant part:

> (8) The term "government-sponsored enterprise" means a corporate entity created by a law of the United States that—
>
> > (A)(i) has a Federal charter authorized by law;
> >
> > (ii) is privately owned, as evidenced by capital stock owned by private entities or individuals;
> >
> > (iii) is under the direction of a board of directors, a majority of which is elected by private owners;
> >
> > (iv) is a financial institution with power to—
> >
> > > (I) make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and
> > >
> > > (II) raise funds by borrowing (which does not carry the full faith and credit of the Federal govern-ment) or to guarantee the debt of others in unlimited amounts; and

(B)(i) does not exercise powers that are reserved to the government as sovereign (such as the power to tax or to regulate interstate commerce);

(ii) does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and

(iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to Title 5.

11 U.S.C. § 101 provides in relevant part:

In this title—

* * *

(5) "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment,

fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

* * *

(10) "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim;

11 U.S.C. § 103(a) provides:

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title.

11 U.S.C. § 106(a) provides:

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722,

724, 726, 728, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the

Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

11 U.S.C. § 362 provides in relevant part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

11 U.S.C. § 501 provides:

(a) A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.

(b) If a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.

(c) If a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim.

(d) A claim of a kind specified in section 502(e)(2), 502(f), 502(g), 502(h) or 502(i) of this title may be filed under subsection (a), (b), or (c) of this section the same as if such claim were a claim against the debtor and had arisen before the date of the filing of the petition.

11 U.S.C. § 502 provides:

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of—

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim

of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide.

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e)(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is

liable with the debtor on or has secured the claim of a creditor, to the extent that—

(A) such creditor's claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(g) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a

reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

11 U.S.C. § 523 provides:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, if required—

(i) was not filed; or

(ii) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than $1,075 [$1,150 effective April 1, 2001] for "luxury goods or services" incurred by an individual debtor on or within 60 days before the order for relief under this title, or cash advances aggregating more than $1,075 [$1,150 effective April 1, 2001] that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 60 days before the order for relief under this title, are presumed to be nondischargeable; "luxury goods or services" do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act;

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim

and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor

was intoxicated from using alcohol, a drug, or another substance;

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency; or

(13) for any payment of an order of restitution issued under title 18, United States Code;

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless—

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a dwelling unit that has condominium ownership or in a share of a cooperative housing corporation, but only if

such fee or assessment is payable for a period during which—

(A) the debtor physically occupied a dwelling unit in the condominium or cooperative project; or

(B) the debtor rented the dwelling unit to a tenant and received payments from the tenant for such period, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed by a court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under section 1915(b) or (f) of title 28, or the debtor's status as a prisoner, as defined in section 1915(h) of title 28; or

(18) owed under State law to a State or municipality that is—

(A) in the nature of support, and

(B) enforceable under part D of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965, or under section 733(g) of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), (6), or (15) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), (6), or (15), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory

agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of a insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

11 U.S.C. § 524 provides:

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1) of this title, or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

(b) Subsection (a)(3) of this section does not apply if—

(1)(A) the debtor's spouse is a debtor in a case under this title, or a bankrupt or a debtor in a case under the Bankruptcy Act, commenced within six years of the date of

the filing of the petition in the case concerning the debtor; and

(B) the court does not grant the debtor's spouse a discharge in such case concerning the debtor's spouse; or

(2)(A) the court would not grant the debtor's spouse a discharge in a case under chapter 7 of this title concerning such spouse commenced on the date of the filing of the petition in the case concerning the debtor; and

(B) a determination that the court would not so grant such discharge is made by the bankruptcy court within the time and in the manner provided for a determination under section 727 of this title of whether a debtor is granted a discharge.

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) such agreement was made before the granting of the discharge under section 727, 1141 1228, or 1328 of this title;

(2)(A) such agreement contains a clear and conspicuous statement which advises the

debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim; and

(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that—

(A) such agreement represents a fully informed and voluntary agreement by the debtor;

(B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and

(C) the attorney fully advised the debtor of the legal effect and consequences of—

(i) an agreement of the kind specified in this subsection; and

(ii) any default under such an agreement;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

(ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any

such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney during the course of negotiating such agreement, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall—

(1) inform the debtor—

(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of—

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement; and

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction,

may be commenced only in the district court in which such injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that—

(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

(I) is to assume the liabilities of a debtor which at the time of entry of the order for relief has been named as a defendant in personal injury, wrongful-death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(II) is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends;

(III) is to own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares of—

(aa) each such debtor;

(bb) the parent corporation of each such debtor; or

(cc) a subsidiary of each such debtor that is also a debtor; and

(IV) is to use its assets or income to pay claims and demands; and

(ii) subject to subsection (h), the court determines that—

(I) the debtor is likely to be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

(III) pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan's purpose to deal equitably with claims and future demands;

(IV) as part of the process of seeking confirmation of such plan—

(aa) the terms of the injunction proposed to be issued under paragraph (1)(A), including any provisions

barring actions against third parties pursuant to paragraph (4)(A), are set out in such plan and in any disclosure statement supporting the plan; and

(bb) a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan; and

(V) subject to subsection (h), pursuant to court orders or otherwise, the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

(3)(A) If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case, then after the time for appeal of the order that issues or affirms the plan—

(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

(iii) no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

(B) Subparagraph (A) shall not be construed to—

(i) imply that an entity described in subparagraph (A)(ii) or (iii) would, if this paragraph were not applicable, necessarily be liable to any entity by reason of any of the acts described in subparagraph (A);

(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal

or State law regarding the making of a fraudulent conveyance in a transaction described in subparagraph (A)(ii) or (iii); or

(iii) relieve a debtor of the debtor's obligation to comply with the terms of the plan of reorganization, or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

(4)(A)(i) Subject to subparagraph (B), an injunction described in paragraph (1) shall be valid and enforceable against all entities that it addresses.

(ii) Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—

(I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

(II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

(III) the third party's provision of insurance to the debtor or a related party; or

(IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to—

(aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or

(bb) acquiring or selling a financial interest in an entity as part of such a transaction.

(iii) As used in this subparagraph, the term "related party" means—

(I) a past or present affiliate of the debtor;

(II) a predecessor in interest of the debtor; or

(III) any entity that owned a financial interest in—

(aa) the debtor;

(bb) a past or present affiliate of the debtor; or

(cc) a predecessor in interest of the debtor.

(B) Subject to subsection (h), if, under a plan of reorganization, a kind of demand described in such plan is to be paid in whole or in part by a trust described in paragraph (2)(B)(i) in connection with which an injunction described in paragraph (1) is to be implemented, then such injunction shall be valid and enforceable with respect to a demand of such kind made, after such plan is confirmed, against the debtor or debtors involved, or against a third party described in subparagraph (A)(ii), if—

(i) as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind, and

(ii) the court determines, before entering the order confirming such plan, that identifying such debtor or debtors, or such third party (by name or as part of an identifiable group), in such injunction with respect to such demands for purposes of this subparagraph is fair and equitable with respect to the persons that might subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party.

(5) In this subsection, the term "demand" means a demand for payment, present or future, that—

(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and

(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

(7) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of the enactment of this subsection.

(h) Application to existing injunctions.—For purposes of subsection (g)—

(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization

confirmed by an order entered before such date, then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if—

(A) the court determined at the time the plan was confirmed that the plan was fair and equitable in accordance with the requirements of section 1129(b);

(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

(C) such legal representative did not object to confirmation of such plan or issuance of such injunction; and

(2) for purposes of paragraph (1), if a trust described in subsection (g)(2)(B)(i) is subject to a court order on the date of the enactment of this Act staying such trust from settling or paying further claims—

(A) the requirements of subsection (g)(2)(B)(ii)(V) shall not apply with respect to such trust until such stay is lifted or dissolved; and

(B) if such trust meets such requirements on the date such stay is lifted or dissolved, such trust shall be considered to have met such requirements continuously from the date of the enactment of this Act.

11 U.S.C. § 541 provides:

(a) The commencement of a case under section 301. 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include—

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution;

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

(A)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or

(B)(i) the debtor has transferred such interest pursuant to a written conveyance

of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 542 of this title; or

(5) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor), unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition. Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law—

> (A) that restricts or conditions transfer of such interest by the debtor; or
>
> (B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of

> the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 726 provides:

> (a) Except as provided in section 510 of this title, property of the estate shall be distributed—
>
> > (1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed before the date on which the trustee commences distribution under this section;
> >
> > (2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—
> >
> > > (A) timely filed under section 501(a) of this title;
> > >
> > > (B) timely filed under section 501(b) or 501(c) of this title; or
> > >
> > > (C) tardily filed under section 501(a) of this title, if—
> > >
> > > > (i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of

a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;

(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;

(5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) sixth, to the debtor.

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind

specified in each such particular paragraph, except that in a case that has been converted to this chapter under section 1009, 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

(c) Notwithstanding subsections (a) and (b) of this section, if there is property of the kind specified in section 541(a)(2) of this title, or proceeds of such property, in the estate, such property or proceeds shall be segregated from other property of the estate, and such property or proceeds and other property of the estate shall be distributed as follows:

(1) Claims allowed under section 503 of this title shall be paid either from property of the kind specified in section 541(a)(2) of this title, or from other property of the estate, as the interest of justice requires.

(2) Allowed claims, other than claims allowed under section 503 of this title, shall be paid in the order specified in subsection (a) of this section, and, with respect to claims of a kind specified in a particular paragraph of section 507 of this title or subsection (a) of this section, in the following order and manner:

(A) First, community claims against the debtor or the debtor's spouse shall be paid from property of the kind specified in section 541(a)(2) of this title, except to the extent that such property is solely liable for debts of the debtor.

(B) Second, to the extent that community claims against the debtor are not paid under subparagraph (A) of this paragraph, such community claims shall be paid from property of the kind specified in section 541(a)(2) of this title that is solely liable for debts of the debtor.

(C) Third, to the extent that all claims against the debtor including community claims against the debtor are not paid under subparagraph (A) or (B) of this paragraph such claims shall be paid from property of the estate other than property of the kind specified in section 541(a)(2) of this title.

(D) Fourth, to the extent that community claims against the debtor or the debtor's spouse are not paid under subparagraph (A), (B), or (C) of this paragraph, such claims shall be paid from all remaining property of the estate.

11 U.S.C. § 727 provides:

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the

matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort; or

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter.

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

(c)(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a

hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or

(3) the debtor committed an act specified in subsection (a)(6) of this section.

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

Appendix

28 U.S.C. § 157 provides:

> (a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.
>
> (b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.
>
> (2) Core proceedings include, but are not limited to—
>
> (A) matters concerning the administration of the estate;
>
> (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
>
> (C) counterclaims by the estate against persons filing claims against the estate;

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> (D) orders in respect to obtaining credit;
>
> (E) orders to turn over property of the estate;
>
> (F) proceedings to determine, avoid, or recover preferences;
>
> (G) motions to terminate, annul, or modify the automatic stay;
>
> (H) proceedings to determine, avoid, or recover fraudulent conveyances;
>
> (I) determinations as to the dischargeability of particular debts;
>
> (J) objections to discharges;
>
> (K) determinations of the validity, extent, or priority of liens;
>
> (L) confirmations of plans;
>
> (M) orders approving the use or lease of property, including the use of cash collateral;
>
> (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and
>
> (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity

security holder relationship, except personal injury tort or wrongful death claims.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those

matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties

28 U.S.C. § 1334 provides:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under [section 158(d)] subsection (e) or (f) of section 158, 1291, or 1292

of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the date of commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

Rule 3001 provides:

(a) *Form and content* -- A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) *Who may execute* — A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) *Claims based on a writing* — When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(d) *Evidence of perfection of security interest* — If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) Transferred claim

(1) *Transfer of claim other than for security before proof filed* — If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

(2) *Transfer of claim other than for security after proof filed* — If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor

by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection land the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

(3) *Transfer of claim for security before proof filed* — If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and the transferee file proofs of the same claims, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party

in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(4) *Transfer of claim for security after proof filed* — If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(5) *Procedures*. An objection under Rule 3001(e)(2) or (4), or a motion under Rule 3001(e)(3) or (4), is governed by Rule 9014. The transferor or transferee,

whichever is appropriate, shall be treated as an entity listed in Rule 9014(c)(1).

(f) *Evidentiary effect* — A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

(g) To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

Rule 3002 provides:

(a) *Necessity for filing* — An unsecured creditor or an equity security holder must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004 and 3005.

(b) *Place of filing* — A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) *Time for filing* — In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt

adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, except as follows:

(1) On motion of the United States, a state, or a subdivision thereof before the expiration of such period and for cause shown, the court may extend the time for filing a claim by the United States, a state, or subdivision thereof.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

(6) In a chapter 7 liquidation case, if a surplus remains after all claims allowed have been paid in full, the court may grant an extension of time for the filing of claims against the surplus not filed within the time herein above prescribed.

Rule 3003 provides:

(a) *Applicability of rule* — This rule applies in chapter 9 and 11 cases.

(b) Schedule of liabilities and list of equity security holders

(1) *Schedule of liabilities* — The schedule of liabilities filed pursuant to § 521(1) of the Code shall constitute prima facie evidence of the validity and amount of

the claims of the creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule.

(2) *List of equity security holders* — The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.

(c) Filing proof of claim

(1) *Who may file* — Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

(2) *Who must file* — Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) *Time for filing* — The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), and (c)(4).

(4) *Effect of filing claim or interest* — A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(1) of the Code.

(5) *Filing by indenture trustee* — An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

(d) *Proof of right to record status* — For the purposes of Rules 3017, 3018, and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. An objection to the statement may be filed by any party in interest.

Appendix

Rule 4007 provides:

(a) *Persons entitled to file complaint* — A debtor or any creditor may file a complaint to obtain a determination of the dischargeability of any debt.

(b) *Time for commencement proceeding other than under §523(c) of the code* — A complaint other than under § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.

(c) *Time for filing complaint under §523(c) in chapter 7 liquidation, chapter 11 reorganization, and chapter 12 family farmer's debt adjustment cases; notice of time fixed* — A complaint to determine the dischargeability of any debt pursuant to § 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to §341(a). The court shall give all creditors not less than 30 days notice of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired.

(d) *Time for filing complaint under § 523(c) in chapter 13 individual's debt adjustment*

Appendix

cases; notice of time fixed — On motion by a debtor for discharge under § 1328(b), the court shall enter an order fixing a time for the filing of a complaint to determine the dischargeability of any debt pursuant to § 523(c) and shall give not less than 30 days notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest after hearing on notice the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired.

(e) *Applicability of rules in Part VII* — A proceeding commenced by a complaint filed under this rule is governed by Part VII of these rules.

Rule 7001 provides in relevant part:

> An adversary proceeding is governed by the rules of this Part VII. It is a proceeding . . . (6) to determine the dischargeability of a debt. . . .